UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

LEISURE CHATEAU CARE CENTER Employer	
and	Case 4–RC–19722
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO Petitioner	

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (hereinafter referred to as the Act), a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has designated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

3. The labor organization involved claims to represent certain alleged employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain alleged employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer operates a 242-bed nursing home in Lakewood, New Jersey (herein called the Home). The Petitioner seeks to represent a unit of 36 full-time and regular part-time

Licensed Practical Nurses (LPNs). The Employer contends that its LPNs are supervisors within the meaning of Section 2(11) of the Act. The record shows that at least the Employer's certified nursing assistants (CNAs) are represented by another labor organization. There is no record evidence of any history of collective bargaining with respect to the LPNs.

The Home operates 24 hours per day, seven days per week. There are three shifts, starting at 7:00 a.m. (day shift), 3:00 p.m. (evening shift), and 11:00 p.m. (night shift). There are four nursing units, called California, Florida, Jerusalem, and Washington. Three of the units have 60 beds, one has 62 beds.

Nursing Administrator (NA) Sophie-Jane Vega is responsible for the overall operation of the Home. Blanche Fitzer, the Assistant Nursing Administrator (ANA), reports to Vega. Vega and Fitzer work in the nursing office. Registered Nurses (RNs) Wilma Lecowski and Margaret Levins manage staff development, including employee training. Sally Krutulis handles staff requests for supplies and reviews staff schedules. There are four Unit Coordinators (UCs) who are all RNs. They work on weekdays during the day shift or from 7:00 a.m. to 4:00 p.m. Karen Mazzeo is the California UC, and Chana Gumabon is the Jerusalem UC. There are about 16 RNs. Customarily, there is an RN Supervisor on each evening and night shift. Occasionally, when no RN is available to work as supervisor on an evening or night shift, NA Vega will ask an LPN to cover that position. There is also a Charge Nurse on each shift, which may be an RN or an LPN. Any LPN, except the two or three newest LPNs, may serve as Charge Nurse. The sign-in sheet for each 24-hour period shows who will be Charge Nurse on each shift. [1]

The UC is responsible for the unit 24 hours per day, seven days per week, and is considered a "department head." The UC conducts patient care conferences, performs all tasks that require an RN, inputs patient information into the computer, intercedes upon requests to resolve difficulties with families or physicians, and attends meetings where the Home's policies are addressed. The Charge Nurse is responsible for managing patient care, including making staffing changes. Either the Charge Nurse or a UC may give assignments to Certified Nursing Assistants (CNAs) and orderlies. LPNs provide direct care, including handing out medications, treating wounds, maintaining patients' charts, giving tube feedings, repositioning patients in their beds, and washing patients. LPNs decide their own assignments. There are two hallways per unit, and an LPN is assigned to a hallway. LPN Maria Kline testified that, when there are just two LPNs on duty, there is no difference between being a Charge Nurse and a regular LPN. The record is unclear as to the scope of a CNA's responsibilities, but they include feeding patients and helping patients use the toilet. CNAs receive a "run" assignment, which means that he or she handles a certain number of patient rooms.

[1] Except for the Employer's argument that the LPNs are statutory supervisors, neither party alleges that any other individual is a statutory supervisor.

The staffing in the units varies according to the shift, whether a unit has Medicare patients, and whether the unit is filled to capacity. Two units have Medicare patients. On the day shift in each non-Medicare unit at capacity, there is a UC and three or four LPNs. The record is unclear as to how many CNAs work in non-Medicare units during the day shift. During the day in each Medicare unit, there may be another RN in addition to the UC, three or four LPNs, and about eight CNAs. On the evening shift in each non-Medicare unit, there are two LPNs and five CNAs; in each Medicare unit, three LPNs and six CNAs. At night, in each non-Medicare unit, there will be an LPN, perhaps an RN, and five CNAs; in each Medicare unit, two or three LPNs (or one to two LPNs and an RN) and five or six CNAs. The record does not show how many orderlies work in the units on each shift.

With respect to scheduling CNAs and the other staff, a Charge Nurse—usually an LPN—generally prepares two-week schedules for each unit, except in the California unit, where UC Mazzeo prepares the schedule. On the Jerusalem wing, LPN Dennis Viets usually prepares the schedules whether or not he is Charge Nurse. In other units, the UC may assist in preparing the schedules if the LPN is not available. The preparation of employee schedules is a multi-step process. According to Petitioner's witnesses, the Charge Nurse or regular LPN prepares the schedule by copying staff members' names from a prior schedule, noting requests for time off. To request time off, CNAs write their names and requested dates in the request book. According to Vega, the individual preparing the schedule decides whether the time-off requests will be granted based on his/her conclusion as to whether the unit is adequately staffed, and no one needs to "approve or validate a staff schedule."[2] According to LPN Maria Kline, the individual preparing the schedule simply notes, but does not approve, the time-off request and that ANA Fitzer "reviews the leave requests" and "tells us whether" the time-off request "is granted or not." Krutulis receives all of the staff schedules, compares them, and checks them to see whether staffing appears adequate. To determine if staffing is adequate, Krutulis examines the number and kind of employees (nurses or CNAs, for example) assigned to the shifts and attempts to balance the staff for that shift. If the shift is short, Krutulis circulates an overtime list to fill the needed slots. Overtime is voluntary. Krutulis writes out and then distributes sign-in sheets, which show employees' names and their particular shifts. While scheduling difficulties happen infrequently, when they arise, they are resolved by the nursing office.

NA Vega testified that an LPN or RN, "[w]hoever is making out the assignment," decides what the CNAs will do on particular shifts. The Charge Nurse may reassign a CNA where "there is a need or a perceived need to have them do something else." LPNs have temporarily assigned CNAs to the dietary department when that department does not have enough staff to prepare breakfasts. On a weekend, when two LPNs may be working without any RNs, the Charge Nurse LPN will match CNAs to "runs" based on seniority and on which run each CNA last performed. The CNAs customarily "switch" their runs so that they will not have

[2] However, Vega stated, that individual would not be authorized to approve leave requests from several nurses for the same date so that the unit would be severely short-staffed.

the same run two consecutive nights. If the unit is short-staffed on a weekend, a Charge Nurse will "break up" CNAs' runs pursuant to choices by the CNAs. In this regard, LPN Kunz testified that she would say to the CNAs, "we have five aides, we have seven runs . . . we have to split two runs. . . . [B]y seniority, pick who [which patients within a run] you are going to do." A Charge Nurse can rearrange staff among several units to ensure that there are enough female CNAs to care for all of the female patients or that there are enough orderlies in a unit. On one occasion, some LPNs recommended that a new CNA be transferred to another unit where there would be a lighter caseload. The Employer transferred the CNA in conjunction with the nurses on the new unit. While Vega testified that an LPN who "does not get along with a CNA" can reassign that person, she could not say "exactly when it [has] happened."

According to NA Vega, if a scheduled CNA cannot report to work, an LPN may ask a CNA to stay late or call a CNA to come in and work overtime. NA Vega testified that an LPN calls whoever is available. If a CNA refused to work overtime, the LPN would call someone else, and no one could discipline a CNA for refusing such a request. LPN Kunz testified that she is authorized to call and request a CNA to work overtime only with the permission of her "supervisor." According to Kunz, if no supervisor is on duty, they work short handed.

Although the Home has a disciplinary policy, the specifics of the policy are unclear. LPN Theresa Smith testified that she is unaware of any "formal disciplinary process or procedure." In its brief, the Employer notes that there is "no regimented disciplinary policy at the facility." LPNs have prepared and signed "Employee Warning Notices" which memorialize a verbal warning or embody a first or second warning. On the form are boxes to mark a first or second warning; boxes to mark the general nature of the offense (such as lateness or unsatisfactory patient care); space to write the description of the offense; space for the employee to write a response; and two signature lines. A warning notice goes into the employee's permanent personnel file. According to NA Vega, "all LPNs have authority to issue warning notices," and a supervisor does not need to co-sign a notice with the LPN. The Petitioner's witnesses testified that after completing a warning notice, they gave the notice to their "supervisor." LPN Maria Kline testified that two or three months ago she completed a notice after she talked to the supervisor who told her to write the person up. The supervisor co-signed the notice. Kline also testified that she does not know if the employee ever received that notice. While LPN Kunz testified that after she completed a warning notice, she gave it to her "supervisor" and perhaps discussed the situation with her supervisor, she also testified that she does not "give out disciplinary actions." LPN Smith testified that after she last completed a warning notice, she gave it to her supervisor, and took no other action.

With respect to an LPN suspending or discharging an employee, NA Vega testified that an LPN who witnesses patient abuse can suspend the employee, pending investigation, or just discharge that employee and that an LPN can send an employee home or give her or him a warning notice if employee is obviously intoxicated. Vega could recall one occasion when this happened. The Employer's policy requires automatic discharge for fighting on the premises. The record shows that an LPN discharged two CNAs for fighting in a hallway six and one-half

years ago. LPN Smith twice recommended discharge, but the Home did not adopt either recommendation. LPN Kline testified that she would have the power to send home, pending investigation, a CNA who slapped a patient; before doing that, she would try to contact a supervisor. Vega also testified that there have been "occasions" when an LPN has sent an employee home who reported to work several hours late, after that employee's work had been reassigned. The Home's "call off" policy is that the employee should call off at least two hours before the beginning of his or her shift.

NA Vega testified that generally LPNs may resolve disputes between, or complaints by, CNAs and that the nurse doing the assignment for the CNAs is responsible for resolving the disputes. According to Vega, the CNAs' collective bargaining representatives have spoken with LPNs and "supervisors" about CNAs' "grievances or complaints" and they attempted to or adjusted grievances with the LPNs.

CNAs and orderlies receive written performance evaluations. LPNs have "input" into these evaluations as LPNs generally discuss performance with the UC or the Charge Nurse who prepares the evaluations. LPNs Kline and Kunz testified that they have no role in evaluating CNAs.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *Providence Hospital*, 320 NLRB 717, 725 (1996), enfd. 121 F.3d 548, 156 LRRM 2001 (9th Cir. 1997); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Hospital*, supra, 320 NLRB at 725; *Juniper Indus.*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise "independent judgment" in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 574, 146 LRRM 2321, 2322 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. *Providence Hospital*, supra, 320 NLRB at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. Id.; *Juniper Indus.*, supra, 311 NLRB at 110. The authority to effectively recommend "generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the recommendation ultimately is followed." *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982) (emphasis in original). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, DDS*, 318 NLRB 70, 70, 76 (1995), citing *NLRB v. Lindsay Newspapers*, 315 F.2d 709, 712 (5th Cir. 1963); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enfd. 961 F.2d 1578, 140 LRRM 2120 (6th Cir. 1992).

The legislative history of Section 2(11) makes it clear that Congress intended to distinguish between employees performing minor supervisory duties and supervisors vested with genuine management prerogatives, and did not intend to remove individuals in the former category from the protections of the Act. S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947), reprinted in 1 Legis. Hist. 407, 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses who merely provide routine direction to other employees as a result of superior training or experience. Id., reprinted at 1 Legis. Hist. at 410 (LMRA 1947). *Providence Hospital*, supra, 320 NLRB at 725; *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). Further, supervisory direction of other employees must be distinguished from direction incidental to an individual's technical training and expertise, and technical employees will not be found to be supervisors merely because they direct and monitor support personnel in the performance of specific job functions related to the discharge of their duties. *Robert Greenspan, DDS*, supra, 318 NLRB at 76; *New York University*, 221 NLRB 1148, 1156 (1975).

In *NLRB v. Health Care & Retirement Corp.*,[3] which also concerned the status of LPNs, the Supreme Court found that the Board had created a false dichotomy between the acts taken in connection with patient care and the acts taken in the interest of the employer. As patient care was the business of the nursing home involved, the Court concluded that attending to the needs of patients was in the interest of the Employer. Accordingly, the Court rejected the Board's position that "a nurse's direction of less skilled employees in the exercise of professional judgment incidental to the treatment of patients, is not authority exercised in the interest of the employer" as inconsistent with the statute and the Court's precedent, citing *NLRB v. Yeshiva University*, 444 U.S. 672 (1980); *Public Employees Retirement System v. Betts*, 492 U.S. 158 (1989); *Packard Motor Car Co. v. NLRB*, 330 U.S. 485 (1947). At the same time, the Court underscored that its decision in *Health Care* concerned only the proper interpretation of the statutory phrase, "in the interest of the employer," that the Board did not petition the Court to uphold its order under any other theory, and that the Court would have given an exposition and analysis of the record evidence if the supervisory issue had been presented under the proper test.

The burden of establishing supervisory status is on the party asserting that such status exists. *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997). The Board has cautioned that the supervisory exemption should not be construed too broadly because the inevitable result of such a construction would be to remove individuals from the protections of the Act. *Providence Hospital*, supra, 320 NLRB at 725. Where the evidence is in conflict, or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Med. Center*, supra, 295 NLRB at 490. In the subject case, the Employer's claim of supervisory status rests on the LPNs' involvement in assigning, responsibly directing, transferring, disciplining, suspending, discharging, or adjusting the grievances of employees.

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[3] supra, 511 U.S. 571, 146 LRRM 2321.

On the questions of assignment, responsible direction, and transfer by LPNs, the Employer relies on evidence that the LPNs, usually when acting as Charge Nurses, prepare two-week unit work schedules. The assignment of unit staff is a multi-step process. The draft schedule is prepared by copying the prior schedule, noting requests for time off. Although there is conflicting record evidence regarding the approval of requests for time off and further approval of the schedules, it is clear that Krutulis reviews and checks the schedules for adequate staffing before she distributes sign-in sheets, i.e., employee schedules. Thus, I find that the LPNs' role in assignments is circumscribed and that overall staffing is handled by Krutulis. I find that in these circumstances, preparing schedules is not indicative of supervisory authority. *Phelps Community Medical Center*, supra, 295 NLRB at 490.

The Board has specifically held that an LPN does not utilize independent judgment when he/she directs CNAs in routine, day-to-day care of patients because his/her action only entails using his/her greater experience and skill to assist a less skilled employee. *Vencor Hospital*, 328 NLRB No. 167, slip op. at 4 (August 5, 1999); *Rest Haven Nursing Home*, 322 NLRB 210, 211 (1996); *Ten Broeck Commons*, supra, 320 NLRB at 811-12; *Providence Hospital*, supra, 320 NLRB at 729. Distributing daily assignments to employees whose skills are not significantly varied, or to employees with different skills whose abilities are well known, is generally routine and not supervisory. *Vencor Hospital*, supra, 328 NLRB No. 167, slip op. at 4; *Bozeman Deaconess Hospital*, 322 NLRB 1107 (1997); *Parkview Manor*, 321 NLRB 477, 478 (1996). When an LPN, acting as a Charge Nurse, matches CNAs to "runs" based on seniority and on which run each CNA last performed, that LPN's function is merely ministerial and does not require the use of independent judgment. With respect to an LPN "breaking up" a CNAs' run, the record shows that that decision is collaborative, and in fact largely dictated by choices by the CNAs. Therefore, there is no evidence that LPNs give anything other than routine daily work assignments and directions to CNAs and orderlies. See *Ten Broeck Commons*, supra, 320 NLRB at 811.

With respect to the role that LPNs play in managing or securing coverage for their own unit or for another department when it is understaffed, the Board has consistently held that the ability to transfer or call in employees based on staffing shortages requires routine, not independent, judgment. *Parkview Manor*, supra, 321 NLRB at 478; *Providence Hospital*, supra, 320 NLRB at 732. Also, "[w]ork assignments made to equalize work among employees" do not indicate supervisory status. *Parkview Manor*, supra, 321 NLRB at 478. The record fails to demonstrate that LPNs' moving female CNAs from one unit to another because of the number of female patients or moving orderlies requires the exercise of independent judgment. The evidence is in dispute as to whether an LPN may, without checking with his or her supervisor, ask an employee to stay late or call an employee to come in and work overtime. In any event, the Employer presented no evidence that an LPN may compel an employee to work overtime, and it is undisputed that an employee who refused overtime would not be disciplined. The ability to ask—not to require—an employee to work extra hours is "limited authority requir[ing]

only routine judgment." *Providence Hospital*, supra, 320 NLRB at 732.[4] Accord: *St. Francis Medical Center-West*, supra, 323 NLRB at 1047.[5]

Based on the foregoing, I find that the LPNs' assignment to, direction of, and transfer of CNAs and orderlies do not indicate supervisory status within the meaning of Section 2(11) of the Act.[6]

On the question of authority to discipline, there is no dispute that LPNs memorialize, prepare, and sign verbal and written warnings about misconduct by CNAs. Those facts alone, however, do not evidence supervisory authority absent a showing that the warnings "result in adverse action to the CNA without further review by higher authority." *Washington Nursing Home*, 321 NLRB 366, 366 fn. 4 (1996). Accord: *Passavant Health Center*, 284 NLRB 887, 889 (1987). The evidence is in dispute about whether an LPN alone issues a warning notice. NA Vega testified in conclusory fashion that "all LPNs have authority to issue warning notices," but the three LPNs testified that they gave a completed warning notice to their supervisor. There was no evidence that an LPN who completed a warning notice gave it to the employee. Moreover, the record contains no description of the Home's disciplinary policy applicable to LPNs, and the Home has acknowledged that there is no formal disciplinary policy. Although a warning notice is placed in an employee's permanent personnel file, there is no evidence that a warning notice "automatically lead[s] to the imposition of suspension or termination or otherwise affect[s] job tenure or status." *Vencor Hospital*, supra, 328 NLRB No. 167, slip op. at

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[4] NA Vega testified that LPNs have assigned overtime to themselves, and the Employer argues that this evidence supports a finding of supervisory status. This evidence is irrelevant because the supervisory status analysis properly considers only that authority exercised by an alleged supervisor over at least one other employee, not authority exercised over oneself.

[5] While NA Vega testified that an LPN who "does not get along with a CNA" can reassign that person, she could not say "exactly when it has happened." This evidence is vague and does not support a finding of supervisory status. *Tree-Free Fiber Co*., 328 NLRB No. 51, slip op. at 4 (May 10, 1999). Also, the evidence of LPNs' recommendation that a CNA be transferred to another unit where there would be a lighter caseload does not indicate that the Nursing Home adopted that recommendation without further review; rather, the Nursing Home moved her in conjunction with the nurses on the new unit. The decision was made by "consensus," id., and does not show supervisory authority within the meaning of Section 2(11).

[6] In *NLRB v. Attleboro Nursing Center*, 176 F.3d 154, 161 LRRM 2139 (3d Cir. 1999), the Third Circuit Court of Appeals rejected the Board's conclusion that the LPNs in that case lacked authority to assign and direct CNAs based on their exercise of greater skill and expertise on the ground that the Board misapplied the "perceived distinction" between professional employees and supervisory employees. In the instant case, the conclusion that LPNs do not exercise supervisory authority in their day-to-day direction of CNAs and orderlies is not based on the claim that their direction was a function of professional judgment rather than supervisory authority. Rather, the direction here is either routine or ministerial.

4. Accord: S.*S. Joachim and Anne Residence*, 314 NLRB 1191, 1195 (1994).[7] In preparing the warning notices for review, the LPNs merely serve in a reportorial capacity—an insufficient basis for showing supervisory status. *Ten Broeck Commons*, supra, 320 NLRB at 812; *Northcrest Nursing Home*, supra, 313 NLRB at 497.

As to the LPNs' authority to suspend employees immediately for serious infractions, NA Vega testified that in various situations an LPN has the power to suspend or send employees home. According to NA Vega, an LPN who witnesses patient abuse can suspend the employee, pending investigation, but the record does not show that that ever occurred. She recalled one occasion where LPNs sent an employee home who appeared drunk. In addition, NA Vega testified that there have been occasions when an LPN sent an employee home who reported to work several hours late, after that employee's work had been reassigned. This evidence is vague and does not show that the LPNs used independent judgment. *NLRB v. Provident Nursing Home*, 1999 WL 508814 at *12 (1ST Cir. July 22, 1999). See *Tree-Free Fiber Co.*, supra, 328 NLRB No. 51, slip op. at 4, 5. Moreover, the Board has held that the authority to discipline employees immediately for serious infractions does not confer supervisory status because such violations are obvious, and the disciplinary decision requires no independent judgment. *Northcrest Nursing Home*, supra, 313 NLRB at 497; *Phelps Community Medical Center*, supra, 295 NLRB at 492. Accord: *NLRB v. Provident Nursing Home*, supra, 1999 WL 508814 at *12.

There is no evidence that LPNs effectively recommend discharge of employees. LPN Smith twice recommended discharge, but the Home did not follow either recommendation. With respect to an LPN discharging another employee, NA Vega testified that an LPN discharged two CNAs for fighting in a hallway six and one-half years ago where the Employer's policy provided for automatic discharge of an employee who fights on the premises. This event is remote in time, there is no evidence of a recent occurrence, and the LPN's response to this clear violation of the Employer's policy required no independent judgment. *Northcrest Nursing Home*, supra, 313 NLRB at 497. See *NLRB v. Provident Nursing Home*, supra, 1999 WL 508814 at *12. NA Vega testified that an employee who witnesses patient abuse can discharge that employee, but the record does not show that such a discharge ever occurred. *Tree-Free Fiber Co.*, supra, 328 NLRB No. 51, slip op. at 4. I find that the record does not support a finding that LPNs discharge, or effectively recommend the discharge of employees within the meaning of Section 2(11) of the Act.

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[7] In *NLRB v. Attleboro Nursing Center*, supra, 176 F.3d 154, 161 LRRM 2139, the Third Circuit held that the Charge Nurses at issue "effectively recommend discipline," the evidence showed that the employer had a four-step disciplinary system. "The first step was verbal counseling documented by a verbal correction report. . . . The second directed the LPN to issue a written warning." The third and fourth steps were suspension without pay and discharge. 161 LRRM at 2145–2147. In the instant case, there is no evidence that the LPNs, unlike the Attleboro nurses, "make a decision to counsel an offending [employee] directly, or initiate a progressive disciplinary process that becomes part of a CNA's permanent personnel file and could lead to her termination." 161 LRRM at 2147 (emphasis added).

The Employer offered only vague, conclusory testimony to support its assertion that LPNs adjust grievances by CNAs. NA Vega testified that the nurse who is doing the assignment for the CNAs generally resolves assignment disputes but the problem-solving process may be collaborative—that the nurses and CNAs may work it out together. Vega also testified that representatives of the CNAs' Union have spoken with LPNs and "supervisors" about CNAs' "grievances or complaints" but gave no specific examples of grievance adjustment. On this record, I find that the Employer has failed to meet its burden of establishing that LPNs have authority to adjust employee grievances. *Tree-Free Fiber Co.*, supra, 328 NLRB No. 51, slip op. at 4.

Regarding an LPN's authority to evaluate others, LPNs Kline and Kunz testified that they have no role in evaluations. NA Vega testified that LPNs have "input" into evaluations and that Charge Nurses and UCs prepare evaluations. In any event, there is no evidence that evaluations have any effect on CNAs' or orderlies' terms or conditions of employment. The Board has found supervisory status where an individual completes evaluations of other employees which lead directly to personnel actions such as merit raises, but has declined to find such status when the evaluations themselves do not "directly affect other employees' job status." *Vencor Hospital*, supra, 328 NLRB No. 167, slip op. at 4. Accord: *Ten Broeck Commons*, supra, 320 NLRB at 813; *Northcrest Nursing Home*, supra, 313 NLRB at 498.

Based on the foregoing, I find the record evidence insufficient to establish that the LPNs possess the requisite indicia of supervisory status. Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time licensed practical nurses employed by the Employer at its Lakewood, New Jersey nursing home, excluding all other employees, Registered Nurses, Unit Coordinators, Nursing Administrator, Assistant Nursing Administrator, Certified Nursing Assistants, orderlies, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued

subsequently,[8] subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman–Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **August 19, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

[8] Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **August 26, 1999**.

Signed: August 12, 1999

at Philadelphia, PA /s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

177-2484-6200-0000
177-8520-0000-0000
524-0133-8700-0000
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